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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,417	01/10/2002	Sean J. Souney		9525

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EXAMINER

PETRIK, KARI KRISTEN

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 04/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/044,417	<b>Applicant(s)</b> SOUNEY ET AL.	
	<b>Examiner</b> Kari Petrik	<b>Art Unit</b> 3743	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 April 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.                                                |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: reference characters 26, 28, and 36 found on page 6 of the specification are not in the drawings. In addition, note the corrections required by the draftsman's review (PTO-948). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. The disclosure is objected to because of the following informalities: Applicant discloses a "friction free ring" (page 6) and a "friction free material" (page 8) in numerous places throughout the specification. This is objected to since all surfaces have friction when in contact with other surfaces.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-8 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

5. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, applicant claims an improvement of the "shape of the design and the density of the material and its influence on its universal application". This claim contains no structural limitations and is being examined to include any orthopedic traction boot.

The claims recite numerous limitations lacking antecedent basis. For example, the claims recite the limitations "the shape" (claim 1), "the minimal number of wide straps" (claim 2), "the external/intermittent pneumatic compression device" (claim 6), and "the attachment point" (claim 7). These are just a few examples, and correction is required for all claims lacking antecedent basis.

Claim 7 is unclear and improper because the specification does not disclose a stirrup with a circular ring being capable of being used alone. It appears that claim 7 should be dependent upon claim 1 and will be interpreted this way for examination purposes.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. As best interpreted, claims 1-6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Eshuis et al (US Patent 3,804,085).

Eshuis et al disclose an orthopedic traction boot permitting application from distal to proximal end and having wide straps that are 90 degrees to the leg (straps 13 are perpendicular to the taper of 12). The wrap is a heavy woven fabric, which is hook/loop compatible and would resist over tightening. The shape creates an enlarged pocket for the heel (16), has an open cutout allowing for the examination of at least a portion of the dorsal area, and an opening (toe area) allowing for the combination of the boot with an external/intermittent pneumatic compression device. The boot has a friction dissipative material (woven fabric) that has less friction than the foam and allows for friction reduction during use.

***Claim Rejections - 35 USC § 103***

8. As best interpreted, claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morrison (US Patent 3,978,853).

Morrison discloses an orthopedic traction boot having a webbing stirrup (36 and 38) and two lateral stays (64 on each side) with a ring (42) that provides the attachment point for the traction. The ring is free moving with respect to hook 60. Morrison does not disclose that the ring is circular. However, at the time the invention was made, it would have been an obvious matter of design choice to one of ordinary skill in the art to have made the rings circular. One of ordinary skill in the art, furthermore, would have expected Morrison's ring and Applicant's invention to perform equally well with either the ring used by Morrison, or the claimed circular ring because both would perform the same function of providing an attachment point for the traction. Therefore, it would have been *prima facie* obvious to modify Morrison to obtain the invention as specified in the claims because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Morrison.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kari Petrik whose telephone number is (571)272-8057. The examiner can normally be reached on M-F 8-4:30.

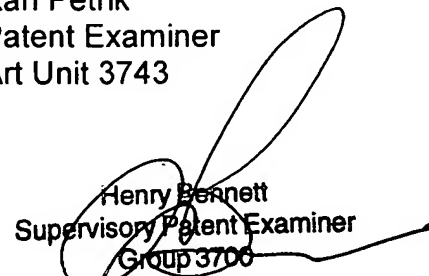
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571)272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Kari Petrik  
Patent Examiner  
Art Unit 3743

KKP  
April 10, 2006

  
Henry Bennett  
Supervisory Patent Examiner  
Group 3700